

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

IN RE: } Case No. 17-05276-LT  
CESAR MEDINA } Chapter 7  
KRYSTAL ANNE MEDINA }  

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KRYSTAL ANNE MEDINA } Adversary No. 19-90065-LT  
Plaintiff, }  
vs. }  
NATIONAL COLLEGIATE STUDENT }  
LOAN TRUST 2006-3; }  
Defendant. } **DECLARATION OF AUSTIN C. SMITH**  
**IN OPPOSITION TO DEFENDANT'S**  
**MOTION FOR SUMMARY JUDGMENT**

1           1. I am assisting Plaintiff and Plaintiff's counsel in this matter.

2           2. I have obtained a variety of documents over several years of litigation with the

3           Defendant and its related entities. Each of the documents below is publicly

4           available on the internet, PACER, or through FOIA requests. Each of these

5           documents is relevant to this motion.

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7           3. A true and correct copy of the Fourth Amended Joint Plan of Reorganization of the

8           Education Resources Institute, Inc. and Official Committee of Unsecured Creditors,

9           Case No. 08-12540 (Bankr. D. Mass Feb. 25, 2010) is attached as **Exhibit 1**.

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11          4. A true and correct copy of the Disclosure Statement for Fourth Amended Joint Plan

12          of Reorganization of the Education Resources Institute, Inc. and the Official

13          Committee of Unsecured Creditors, Case No. 08-12540 (Bankr. D. Mass Feb. 25,

14          2010), is attached as **Exhibit 2**.

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16          5. A true and correct copy of the April 7, 2008 Affidavit of Willis J. Hullings in

17          Support of First Day Motions, Case No. 08-12540 (Bankr. D. April 7, 2008), is

18          attached as **Exhibit 3**.

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20          6. A true and correct copy of the June 13, 2008 Affidavit of William J. Hullings III in

21          Support of Motion of Debtor for Order (A) Pursuant to Section 365 of the

22          Bankruptcy Code Authorizing the Debtor to Reject Certain Contracts with the First

23          Marblehead Corporation and (B) Pursuant to Section 363 of the Bankruptcy Code

24          Authorizing The Debtor to Enter into a Transition Services Agreement, Case No.

25          08-12540 (Bankr. D. Mass Jun 13, 2008), is attached as **Exhibit 4**.

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1           7. A true and correct copy of The First Marblehead Corporation's 2004 Annual  
2           Report, obtained from the Security and Exchange Commission's EDGAR online  
3           database,<sup>1</sup> is attached as **Exhibit 5**.

4           8. A true and correct copy of The First Marblehead Corporation's 2006 Annual  
5           Report, obtained from the Security and Exchange Commission's EDGAR online  
6           database, is attached as **Exhibit 6**.

7           9. A true and correct copy of The Education Resources Institute's Returns of  
8           Organization Exempt from Income Tax for the calendar years beginning  
9           01/01/2001 and ending 06/30/2008,<sup>2</sup> together comprised of eight individual filings  
10           each bearing a stamp indicating date of IRS receipt, is attached as **Exhibit 7**.

11           10. A true and correct copy of a June 30, 1995 letter from Delloitte & Touche LLP to  
12           the Internal Revenue Service National Office regarding an Application for  
13           Recognition of Exemption for TERI Financial Serices, Inc., bearing a stamp  
14           indicating date of IRS receipt, is attached as **Exhibit 8**.

15           11. A true and correct copy of TERI Financial Services, Inc.'s Application for  
16           Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code,  
17           bearing the stamp indicating date of IRS receipt, is attached as **Exhibit 9**.

18           12. A true and correct copy of TERI's Statement of Financial Affairs, Case No. 08-  
19           12540 (Bankr. D. Mass Jun 23, 2008) is attached as **Exhibit 10**.

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27           <sup>1</sup> See *S.E.C. v. Jasper*, 678 F.3d 1116, 1122-3 (C.A.9 (Cal.), 2012) (holding that a corporation's Form 10-K  
28           annual report is admissible as a business record); *see also In re Copper Mt. Secs. Litig.*, 311 F. Supp. 2d 857, 863  
         (N.D. Cal. 2004) (holding that documents filed with the SEC are appropriate for judicial notice).

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32           <sup>2</sup> See *Hughes v. U.S.*, 953 F.2d 531, 539-40 (C.A.9 (Cal.),1992). ("[T]his circuit as well as other circuits  
         have held that official IRS documents . . . are admissible as public records.").

1           13. A true and correct copy of an excerpt from Bankruptcy Improvement Act:

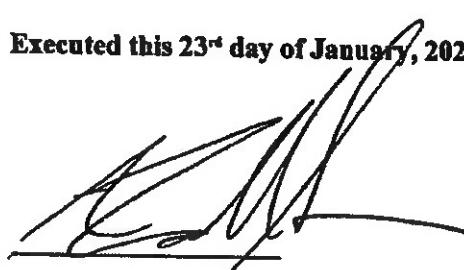
2           Hearing on P.L. 98-353 Before the S. Comm. on Judiciary, at 328 (April 6, 1983)

3           (Comments on Subtitle I of S. 445) is attached as **Exhibit 11**.

4           14. Plaintiff hereby requests that the Court take judicial notice of the referenced  
5           documents.

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7           **I declare under penalty of perjury of the laws of the United States that the above**  
8           **is true and correct.**

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10           11           **Executed this 23<sup>rd</sup> day of January, 2020.**



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13           14           **Austin C. Smith**

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16           17           **NY Bar No. 5377254**

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